73.

SUPREME COURT OF THE UNITED STATES.

No. 78.

JOHN SCOTT AND CARL BOLAND, PLAINTIFFS IN ERROR,

vs.

JOHN JONES, EX DEM. THE DETROIT YOUNG MEN'S SOCIETY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

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J. & G. S GIDEON, printers.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the [L. S.] supreme court of the State of Michigan, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said supreme court of the State of Michigan, before you, between John Scott and Carle Boland and John Jones ex demise The Detroit Young Men's Society, a manifest error hath happened to the great damage of the said John Scott and Carle Boland, as by their complaint appears; and it being fit that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ; so that you have the same at Washington on the second Monday of January next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this ninth day of January, in the year of our Lord one thousand eight hundred and forty-three, and of the independence of the United States the sixty-seventh.

JNO. WINDER,
Clerk of the circuit court of the United States for the seventh circuit and district of Michigan.

The return to the foregoing writ of error will appear from the record hereunto annexed.

JOHN NORVELL, *Clerk.*
June 16, 1843. By W. T. YOUNG, *Dep. clk.*

UNITED STATES of AMERICA, *ss:*

To John Jones, ex demise of the Detroit Young Men's Society, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington, on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Michigan, for the first circuit, wherein John Scott and Carle Boland are plaintiffs, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned

should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable George Morell, chief justice of the supreme court of the State of Michigan, this 11th day of March, in the year of our Lord A. D. 1843.

GEO. MORELL,
Chief justice of the supreme court of the State of Michigan.

UNITED STATES OF AMERICA,
State and district of Michigan, ss:

Henry T. Backus, being duly sworn, says, that he did, on the fourteenth day of March, in the year eighteen hundred and forty-three, serve the within citation on the Detroit Young Men's Society, by leaving a true copy of the same in the hands of John S. Abbott, president of the said society, and exhibiting and reading to him the original citation.

HENRY T. BACKUS.

Subscribed and sworn to before me, this 14th day of March, in the year 1843, at the city of Detroit, in the district of Michigan, before me.

JNO. WINDER, *Clerk*
Cir. court, U. S., district of Michigan.

STATE OF MICHIGAN, *Supreme court, first circuit:*

JOHN SCOTT and CARL BOLAND, plaintiffs in error,
vs.
JOHN JONES, ex demise of the Detroit Young Men's Society, defendant in error.

Pleas at the city of Detroit, before the justices of the supreme court of the State of Michigan, for the first circuit, in the term of January, in the year of our Lord one thousand eight hundred and forty-three.

STATE OF MICHIGAN, *to wit:*

John Scott and Carl Boland, plaintiffs, put in their place Henry T. Backus, as their attorney, against John Jones, ex demise The Detroit Young Men's Society, defendant in error.

STATE OF MICHIGAN, *to wit:*

John Jones, ex demise the Detroit Young Men's Society, defendant in error, puts in his place George E. Hand, as his attorney, at the suit of the said John Scott and Carl Boland, plaintiffs in error.

STATE OF MICHIGAN, *to wit:*

The people of the State of Michigan sent to the judges of the circuit court for the county of Wayne, their writ of error close in these words, to wit:

STATE OF MICHIGAN, *Supreme court, first circuit:*

In the name of the people of the State of Michigan to the judges of the circuit court for the county of Wayne, greeting:

Because in the record and proceedings, and also in the giving of judgment in a plaint, which was in said circuit court, for [L. S.] the county of Wayne aforesaid, before you, between John Scott and Carl Boland, defendants, and John Jones, ex demise of the Detroit Young Men's Society, plaintiffs, in a plea of ejectment, manifest error hath intervened, to the great damage of the said John Scott and Carl Boland, as by their complaint we are informed, and we being willing that the error, if any there be, should, in due manner, be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do, in the name of the people of the State of Michigan, command you, that if judgment be thereupon given, then you send to the justices of the supreme court of the State of Michigan, for the first circuit, distinctly and openly, under your seal, the records and proceedings of the plaint aforesaid, with all things concerning the same, and this writ, so that they may have them on Saturday, the eighth day of January instant, at the court house in the city of Detroit, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon for correcting that error, what of right, and according to law, should be shown. And, in the mean time, you are to stay all further proceedings in said cause until the further order of this court.

Witness the honorable William A. Fletcher, chief justice of the supreme court of the State of Michigan, at the city of Detroit, the sixth day of January, in the year eighteen hundred and forty-two.

CHAS. PELTIER, *Clerk.*

Endorsement.—A bond filed according to law, to operate as a supersedeas, and approved.

CHAS. PELTIER, *Clerk.*

H. T. BACKUS, *Attorney for pltffs. in error.*

To which said writ of error return was made at the time and place therein directed and commanded, and is in the words and figures following, that is to say: "Detroit, January 7, 1842. The execution of this the within writ appears by the papers hereunto annexed. THEO. WILLIAMS, *Clerk.*

JOHN JONES, on the demise of the Young Men's Society
vs.
JOHN SMITH.
} Calender D. 458.

Pleas of the circuit court of Wayne county, at the city of Detroit, in Wayne county, and State of Michigan, on the twenty-second day of December, and in the November term of said court in the year one thousand eight hundred and forty-one.

WAYNE COUNTY, *to wit:*

John Jones, on the demise of the Young Men's Society, plaintiff in this suit, puts in his place George E. Hand, his attorney, to prosecute this suit against John Scott, in a plea of ejectment.

WAYNE COUNTY, *to wit:*

John Scott, defendant in this suit, puts in his place Henry T. Backus, his attorney, at the suit of the said plaintiff, in the plea aforesaid.

WAYNE COUNTY, *to wit:*

Be it remembered, that heretofore, to wit, at Detroit, in the county and State aforesaid, and on the nineteenth day of June, in the year one thousand eight hundred and thirty-seven, the said plaintiff, John Jones, by his attorney aforesaid, filed in the office of the clerk of said court his certain declaration and affidavit against the said defendant, which declaration and affidavit are in the words following, to wit:

STATE OF MICHIGAN,
Circuit court of the county of Wayne:

Of the May term, in the year of our Lord one thousand eight hundred and thirty-seven.

Wayne county, ss:

John Smith, late of Detroit, in said county, was attached to answer John Jones of a plea, wherefore the said John Smith with force and arms, &c., entered into a certain messuage, with the appurtenances, situate in the city of Detroit, in the county of Wayne, and State of Michigan, which the Detroit Young Men's Society had demised to the said John Jones for a term which is not yet expired, and ejected him from his said farm, and other wrongs to the said John Jones then did, to the great damage of the said John Jones, and against the peace of the people of the State of Michigan. And thereupon the said John Jones, by George E. Hand, his attorney, complains that, whereas the said Detroit Young Men's Society, on the second day of July, in the year of our Lord one thousand eight hundred and thirty-six, at the city of Detroit aforesaid, in the county aforesaid, had demised the said tenement, to wit, lot number 56, in section one, in said city of Detroit, with the appurtenances, to the said John Jones and his assigns, from the said second day of July last past, for and during and unto the full end and term of five years from then next ensuing, and fully to be complete and ended; by virtue of which said demise the said John Jones entered into the said tenement with the appurtenances, and became and was thereof well possessed for the said term so to him thereof granted, and the said John Jones being so thereof possessed, the said John Smith afterwards, to wit, on the third day of July, in the year aforesaid, with force and arms, &c., entered into the said tenements, with the appurtenances, which the said Detroit Young Men's Society had

demised to the said John Jones in the manner and for the term aforesaid, which is not yet expired, and ejected the said John Jones from his said farm, and other wrongs to the said John Jones then and there did, to the great damage of the said John Jones, and against the peace of the said people. *Wherefore*, the said John Jones saith that he is injured, and hath sustained damage to the value of one thousand dollars, and therefore he brings his suit, &c.

I am informed that you are in possession of a claim title to the premises in this declaration of ejectment mentioned, or to some part thereof, and I being sued in this action as a casual ejector only, and having no claim or title to the same, do advise you to appear in the circuit court, for the county of Wayne, before the judges of said court, at the City Hall, in the city of Detroit, by some attorney of that court, on the nineteenth day of June, 1837, and then and there, by rule of the same court, cause yourself to be made defendant in my stead, otherwise I shall suffer judgment therein to be entered against me by default, and you will be turned out of possession.

Yours, lovingly,

(Signed,) JOHN JONES.

STATE OF MICHIGAN, *circuit court of Wayne county:*

JOHN JONES, on demise of Detroit Young Men's Society, plaintiff,
vs.
JOHN SMITH, defendant.

George E. Hand, of the city of Detroit, maketh oath and saith, that he did, on the seventeenth day of June present, personally serve John Scott and Call Polland, tenants of the premises in the declaration of ejectment hereunto annexed mentioned, or some part thereof, with a true copy of the said declaration and of the notice thereunder written hereto annexed, except that the notice under written was directed to said Scott and Polland respectively; and this deponent did, at the same time, acquaint and inform the said John Scott and Call Polland of the intent, meaning, and operation of the said declaration and notice.

(Signed,) GEORGE E. HAND.

Sworn and subscribed this 29 June, 1837, before me,

D. E. HARBAUGH, *J. P. W. C.*

Re-sworn to before me this 20 day of June, 1837.

B. F. H. WITHERELL, *J. P. W. Co. M.*

And afterwards, to wit, on the twenty-sixth day of June, and yet of the May term of said court, in the year last aforesaid, the process between the parties was continued until the next November term of said court.

And now, to wit, on the twenty-seventh day of November, in the November term of said court, in the year last aforesaid, leave was granted for the said plaintiff to amend his declaration in this cause.

And afterwards, to wit, on the twenty-seventh day of February, in the year eighteen hundred and thirty-eight, and yet of the No-

vember term of said court, in the year eighteen hundred and thirty-seven, the process between the parties was further continued until the next May term of said court, and from the said May term, the process between the parties was further continued until the next December term of said court, and from the said December term the process between the parties was further continued until the next April term of said court, and from the said April term the process between the parties was further continued until the next November term of said court.

And now, to wit, on the eleventh day of January, in the year one thousand eight hundred and thirty-nine, the said plaintiff, by his attorney aforesaid, filed in the office of the clerk of said court his certain amended declaration, which said declaration is in the words following, to wit:

STATE OF MICHIGAN, *Circuit court of Wayne county:*

Of the May term, in the year of our Lord one thousand and eight hundred and thirty-seven.

WAYNE COUNTY, *ss:*

Carl Boland and John Scott, of said county, were attached to answer John Jones of a plea wherefore the said Carl Boland and John Scott, with force and arms, &c., entered into a certain messuage, with the appurtenances, situate in the city of Detroit, in the said county and State, which the Detroit Young Men's Society had demised to the said John Jones, for a term which is not yet expired, and ejected him from his said farm, and other wrongs to the said John Jones then and there did, to the great damage of the said John Jones, and against the peace of the people of the State of Michigan. And thereupon, the said John Jones, by George E. Hand, his attorney, complains that whereas the said Detroit Young Men's Society, on the second day of July, in the year of our Lord one thousand eight hundred and thirty-six, at the city of Detroit aforesaid, in the county aforesaid, had demised the said tenements, to wit:

Lot fifty-six, in section one, in the said city of Detroit, with the appurtenances, to the said John Jones, and his assigns, from the said second day of July last past, for and during and unto the full end and term of five years from thence next ensuing, and fully to be complete and ended. By virtue of which said demise, the said John Jones entered into the said tenement with the appurtenances, and became and was thereof well possessed for the said term so to him granted thereof as aforesaid, and the said John Jones being so thereof possessed, the said Carl Boland and John Scott afterwards, to wit, on the third day of July, in the year aforesaid, with force and arms, &c., entered into the said tenements with the appurtenances, which the said Young Men's Society had demised to the said John Jones, in manner and for the term aforesaid, which is not yet expired, and ejected him, the said John Jones, from his farm, and other

demised to the said John Jones in the manner and for the term aforesaid, which is not yet expired, and ejected the said John Jones from his said farm, and other wrongs to the said John Jones then and there did, to the great damage of the said John Jones, and against the peace of the said people. *Wherefore*, the said John Jones saith that he is injured, and hath sustained damage to the value of one thousand dollars, and therefore he brings his suit, &c.

I am informed that you are in possession of a claim title to the premises in this declaration of ejectment mentioned, or to some part thereof, and I being sued in this action as a casual ejector only, and having no claim or title to the same, do advise you to appear in the circuit court, for the county of Wayne, before the judges of said court, at the City Hall, in the city of Detroit, by some attorney of that court, on the nineteenth day of June, 1837, and then and there, by rule of the same court, cause yourself to be made defendant in my stead, otherwise I shall suffer judgment therein to be entered against me by default, and you will be turned out of possession.

Yours, lovingly,

(Signed,) JOHN JONES.

STATE OF MICHIGAN, *circuit court of Wayne county:*

JOHN JONES, on demise of Detroit Young Men's Society, plaintiff,
vs.
JOHN SMITH, defendant.

George E. Hand, of the city of Detroit, maketh oath and saith, that he did, on the seventeenth day of June present, personally serve John Scott and Call Polland, tenants of the premises in the declaration of ejectment hereunto annexed mentioned, or some part thereof, with a true copy of the said declaration and of the notice thereunder written hereto annexed, except that the notice under written was directed to said Scott and Polland respectively; and this deponent did, at the same time, acquaint and inform the said John Scott and Call Polland of the intent, meaning, and operation of the said declaration and notice.

(Signed,) GEORGE E. HAND.

Sworn and subscribed this 29 June, 1837, before me,

D. E. HARBAUGH, *J. P. W. C.*

Re-sworn to before me this 20 day of June, 1837.

B. F. H. WITHERELL, *J. P. W. Co. M.*

And afterwards, to wit, on the twenty-sixth day of June, and yet of the May term of said court, in the year last aforesaid, the process between the parties was continued until the next November term of said court.

And now, to wit, on the twenty-seventh day of November, in the November term of said court, in the year last aforesaid, leave was granted for the said plaintiff to amend his declaration in this cause.

And afterwards, to wit, on the twenty-seventh day of February, in the year eighteen hundred and thirty-eight, and yet of the No-

vember term of said court, in the year eighteen hundred and thirty-seven, the process between the parties was further continued until the next May term of said court, and from the said May term, the process between the parties was further continued until the next December term of said court, and from the said December term the process between the parties was further continued until the next April term of said court, and from the said April term the process between the parties was further continued until the next November term of said court.

And now, to wit, on the eleventh day of January, in the year one thousand eight hundred and thirty-nine, the said plaintiff, by his attorney aforesaid, filed in the office of the clerk of said court his certain amended declaration, which said declaration is in the words following, to wit:

STATE OF MICHIGAN, *Circuit court of Wayne county:*

Of the May term, in the year of our Lord one thousand and eight hundred and thirty-seven.

WAYNE COUNTY, *ss:*

Carl Boland and John Scott, of said county, were attached to answer John Jones of a plea wherefore the said Carl Boland and John Scott, with force and arms, &c., entered into a certain messuage, with the appurtenances, situate in the city of Detroit, in the said county and State, which the Detroit Young Men's Society had demised to the said John Jones, for a term which is not yet expired, and ejected him from his said farm, and other wrongs to the said John Jones then and there did, to the great damage of the said John Jones, and against the peace of the people of the State of Michigan. And thereupon, the said John Jones, by George E. Hand, his attorney, complains that whereas the said Detroit Young Men's Society, on the second day of July, in the year of our Lord one thousand eight hundred and thirty-six, at the city of Detroit aforesaid, in the county aforesaid, had demised the said tenements, to wit:

Lot fifty-six, in section one, in the said city of Detroit, with the appurtenances, to the said John Jones, and his assigns, from the said second day of July last past, for and during and unto the full end and term of five years from thence next ensuing, and fully to be complete and ended. By virtue of which said demise, the said John Jones entered into the said tenement with the appurtenances, and became and was thereof well possessed for the said term so to him granted thereof as aforesaid, and the said John Jones being so thereof possessed, the said Carl Boland and John Scott afterwards, to wit, on the third day of July, in the year aforesaid, with force and arms, &c., entered into the said tenements with the appurtenances, which the said Young Men's Society had demised to the said John Jones, in manner and for the term aforesaid, which is not yet expired, and ejected him, the said John Jones, from his farm, and other

wrongs to the said John Jones then and there did, to the great damage of the said John Jones, and against the peace of the said people. *Wherefore*, the said John Jones saith, he is injured and hath sustained damage by reason of the said trespasses to the value of one thousand dollars, and therefore he brings suit, &c.

(Signed) GEO. E. HAND,
Attorney for plaintiff.

And afterwards, to wit, on the twenty-first day of November, in the year eighteen hundred and thirty-nine, the said defendant, John Scott, by his attorney aforesaid, filed in the office of the clerk of said court his certain plea, which said plea is in the words following, to wit:

WAYNE COUNTY CIRCUIT COURT, *November term, A. D.* 1837.

JOHN SCOTT
ads.
JOHN JONES, on the demise of the Detroit Young Men's Society.

And the said John Scott, by Backus, his attorney, comes and defends the force and injury, when, &c., and says, that he is not guilty of the said supposed trespass and ejectment above laid to his charge, or of any part thereof, in manner and form as the said John Jones hath above thereof complained against him; and of this the said John Scott puts himself upon the country, &c.

(Signed) H. T. BACKUS,
Attorney for defendant.

And afterwards, to wit, on the twentieth day of January, in the year eighteen hundred and forty, and yet of the November term of said court, in the year eighteen hundred and thirty-nine, the process between the parties was further continued until the next May term of said court, and from the said May term, the process between the parties was further continued until the next November term of said court, and from the said November term, the process between the parties was further continued until the next May term of said court, and from the said May term, the process between the parties was further continued until the next November term of said court, to wit, the eighteenth day of November, in the year and term of said court, first aforesaid.

Therefore, let there come a jury thereof before the judges of the circuit court aforesaid, at the court house, in the city of Detroit, on the seventeenth day of November, in the year and term of said court first aforesaid, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c., the same day is given to the parties, here, &c., at which day before the judges aforesaid, at the court house, in the city of Detroit, come the said parties, by their attorneys aforesaid, and thereupon comes a jury, to wit:

Abraham Cook, William Fletcher, Robert Morrison, John Crowfoot, Leman Bronson, James Hanmer, Benjamin Gooch, Cornelius C. Post, John Bronson, George A. Hitchcock, and there not being

a sufficient number of jurors in court, the sheriff, by order of the court, summoned from among the by-standers Thomas Palmer and John C. Williams, as talesmen, who, together with the jurors aforesaid, being duly elected, tried, and sworn, upon their oath say, that they find that the defendants are guilty of the trespass and ejectment in manner and form as the said plaintiff in his declaration hath alledged, and that the plaintiff is seized of an estate in fee simple in said premises, to wit, lot number fifty-six, in section number one, in the city of Detroit, and is well entitled to have and hold the same, and also that the plaintiffs do recover of said defendants the tract of land and premises above mentioned and described in the declaration, and they assess the said plaintiff's damages at six cents.

Therefore, it is considered that the said plaintiff do have and recover against the said Carl Boland and John Scott his term yet to come, of and in the lands and premises in plaintiff's declaration mentioned and described, with the appurtenances, to wit: lot numbered fifty-six, in section numbered one, in the city [of] Detroit, and the possession thereof, and also six cents, by the jurors aforesaid, in form aforesaid assessed, thirty-one dollars and forty-one cents, now here by the court adjudged to the said plaintiff for his costs and charges in this behalf laid out and expended, with his assent; which said damages, costs, and charges, the whole amount to sixteen dollars and forty-seven cents; and the defendants in mercy, &c.

Judgment rendered, December 22d, 1841.

STATE OF MICHIGAN, *Wayne county, ss:*

I, Theodore Williams, clerk of the circuit court of said county, do certify that the foregoing is truly taken and copied from the records of the proceedings of said court, and that the same has been examined and compared with the original.

In testimony whereof, I have hereunto affixed the seal of said court, and subscribed my name, this seventh day of January, one thousand eight hundred and forty-two.

[L. S.]

(Signed) THEO. WILLIAMS, *Clerk.*

Fees, $2 00.

And now, at this day, to wit, in the term of January, in the year one thousand eight hundred and forty-two, before the justices of the supreme court of the State of Michigan, for the first circuit, at the court house, in the city of Detroit, the said plaintiffs in error, to wit, John Scott and Carl Boland, by their attorney aforesaid now here, bring into this court before the justices aforesaid a certain bill of exceptions, taken and sealed on the trial aforesaid, of the issue aforesaid, and filed with the clerk of the said circuit court, and hereupon the said bill of exceptions, on the prayer of the said plaintiffs in error, is entered on the record of the proceedings in this cause, and is enrolled in the words and figures following, to wit:

STATE OF MICHIGAN, *County of Wayne:*

JOHN JONES, ex demise of the Detroit Young Men's Society, }
vs.
JOHN SCOTT & CARL BOLAND. }

Circuit court for said county, of the November term, in the year of our Lord one thousand eight hundred and forty-one.

Be it remembered, that the parties in this cause were at issue on the plea of the defendants, that they were not guilty of the trespass in ejectment, in manner and form as the plaintiff in his declaration alledged, and a jury being regularly and legally empannelled to try said issue, to wit, for the recovery of lot fifty-six, in section one, of the city of Detroit; and on the trial of said issue, to prove that the lessors of the plaintiff were a body politic and corporate, and capable of taking and holding real estate, the plaintiff offered in evidence what purported to be an act of the Legislature of the State of Michigan, approved by Stevens T. Mason, as governor of the said State, bearing date the twenty-sixth day of March, in the year eighteen hundred and thirty-six, entitled "An act to incorporate the members of the Detroit Young Men's Society," to the admission of which as evidence in said cause, the defendants, by their attorney, objected that said act was not of force, nor in any wise sufficient in the law to create and constitute the lessors of the plaintiff a corporation or body politic in the law capable to take or hold the lot or premises, nor the title thereof, nor to exercise any corporate rights or powers in virtue or under color of said act, for that, at the time of the passage and approval of said act, to wit, the twenty-sixth day of March, eighteen hundred and thirty-six, the government of the State of Michigan was not in anywise established, nor had any legal force or operation, and neither the Senate or House of Representatives or Governor of the State of Michigan, by which said act purported to be passed and approved, had any legal existence; which objections the court overruled, and allowed said act to be read to the jury as evidence, constituting the lessors of the plaintiff a body politic and corporate in law, capable to take or hold the said lot or premises and the title thereof, and to exercise all the corporate rights and powers in said act specified; to all which, by their attorney, the defendants duly excepted.

And in the further proceedings in said cause, on said issue, and to prove title in the lessors of the plaintiff to said lot fifty-six, in section one, of the city of Detroit, and the only evidence of such title, the plaintiff offered to read to the said jury a certain paper writing, purporting to be a deed of bargain and sale of said lot or premises to the lessors of the plaintiff, bearing date the first day of July, in the year eighteen hundred and thirty-six, which purported on that day to have been signed and sealed by Solomon Sibley, judge, George Morell, and Ross Wilkins, judge, and the execution thereof to have been witnessed by Asher S. Kellog and Jacob M.

Howard, the plaintiff first having proved by the said Kellog that the said Solomon, George, and Ross, signed and sealed said instrument on the day the same bears date, and that on or before that day they were reputed to be, and acted as judges of the Territory of Michigan, appointed by the authority of the United States of America; and that, at the same time, one John S. Horner, was reputed to be Governor of the Territory of Michigan, appointed by the same authority, which said paper writing is in the words and figures following, as expressed in a copy of the same, hereunto annexed, marked (A,) to the reading of which to the jury as evidence of title in the lessors of the plaintiff to the said lot or premises the defendants, by their attorney, objected.

First, that at the time said instrument was executed, the governor and judges of the Territory of Michigan had no legal existence, the people of said Territory having before that time formed and established a constitution and State government, by the election and qualification of a senate, house of representatives, and governor of the State of Michigan, under said constitution, and then in the full exercise of their functions as such.

Second. That said deed or instrument purporting to convey said lot or premises on a sale, was inoperative and void, not being executed by the governor of the Territory of Michigan, which was requisite under the act of Congress, of the twenty-first day of April, in the year eighteen hundred and six, referred to in said paper instrument or deed under which the lessors of the plaintiff made title as aforesaid.

Third. That said instrument was void and inoperative to convey title, not being acknowledged or proved, as required by the fundamental ordinance for the government of the territory north-west of the river Ohio, of seventeen hundred and eighty-seven, or the law of the time when the same was executed as aforesaid, requiring all deeds for the conveyance of real estate to be acknowledged or proved.

Fourth. That said instrument purported to sell a lot in the city of Detroit, which could alone be donated and not sold.

Fifth. That parol evidence was inadmissible, to prove the persons who purported to have executed said deed or instrument were the judges of the Territory of Michigan; all which objections were by the court overruled, and said instrument suffered to be read to the jury, as proof of title in the lessors of the plaintiff, and to which the defendants by their attorneys excepted.

In the further progress of the trial of said issue, it appeared in evidence, that the lessors of the plaintiff purported to go into operation, on or about the first of April, A. D. 1836, and have since purported to act as a corporation under the said act of 26th of March, A. D. 1836.

And in the further progress of the trial of said issue, the defendants first having shown that they have been in possession of said

lot or premises since the year A. D. 1836, offered to read to the jury as evidence of title a deed from the treasurer of the county of Wayne, regularly executed, acknowledged and recorded, bearing date the tenth day of October, A. D. 1833, conveying to John Scott, one of the defendants, the title to said lot fifty-six, for the taxes, costs and charges on the same, on the assessment of the same for the year 1828, and insisted that the said deed, without further evidence, should be received as conclusive, or at least *prima facie* evidence of title, (the said Carl Boland holding under the said Scott,) under the provisions of the law of the Territory of Michigan, then in force at the date of said tax deed, to the admission of which in evidence, the plaintiff, by his attorney objected, and the court sustained the objection, and held said deed inadmissible and incompetent as evidence to be read to the jury, until the defendants should first show that said lot fifty-six was liable to be assessed for taxes, that the title had passed out of the United States, and that the same had been regularly assessed and returned, to which decision of the court the defendants, by their attorney, excepts.

The defendants then read in evidence, from the records of the late governor and judges of the Territory of Michigan, their resolution, date the 8th day of September, in the year 1806, in the following words: "Resolved, that the basis of the said town be an "equilateral triangle, having each side of the length of four thou- "sand feet, and having every angle bisected by a perpendicular "line upon the opposite side, such parts being excepted as, from "the approximation of the river, or other unavoidable circum- "stance, may require partial deviations;" and then proved by A. E. Hathon, that according to a mathematical calculation, based upon the foregoing, and other resolutions, that the lot now claimed, and known as fifty-six, in section one, of the city of Detroit, is the same lot as was prior to the 27th April, 1807, known as lot fifty-two, in the same section: the defendants further offered to read to the jury from the same records, the resolution of the late governor and judges of the Territory of Michigan, bearing date the 13th day of March, in the year 1807, by which it would appear, that the said governor and judges had on that day ordered said lot fifty-two, in section one, to be assigned to Elijah Brush, agent for Tod and McGill, which said resolution is as follows:

"Resolved, that the following lots be assigned to Elijah Brush, agent for Tod and McGill, for extinguishing all their claims, to wit:

Lot No. 52, section No. 1,
do. " 46, " " 1,
do. " 45, " " 1,
do. " 46, " " 2,
do. " 47, " " 2,
do. " 42, " " 7,
do. " 21, " " 7, at the big square."

And the defendants further offered by said records to show that said resolution had never been rescinded, to which evidence so offered, the plaintiff by his attorney objected, and the court sustained the objection, and did not permit the said evidence to be given to the jury, to which the defendant, by his attorney, duly excepted.

The defendants then offered a competent witness, by whom he tendered to prove, that said witness, as one of the assessors of the city of Detroit, in the year 1828, for the purpose of making out the assessment roll of said city, applied to the governor and judges of the late Territory of Michigan, to ascertain what lots in said city, had by them been conveyed, and were therefore subject to be assessed and taxed, and among others, was informed by them, that the lot in question had been by them conveyed, and was subject to taxation; and which was accordingly assessed by said witness and his associate assessors, assessed as non-resident property; to the admission of which testimony the plaintiff, by his attorney, objected, and the court sustained the objection and rejected the testimony, and the defendants duly excepted thereunto.

And in the further progress of the trial of said issue, the defendants offered by witnesses to prove that the records and proceedings of the governor and judges of the late Territory of Michigan had been badly and inaccurately kept, and that many grants and deeds of lots in said city of Detroit, in fact, existed from the said governor and judges, which in no wise appeared from the records kept by them.

And the defendants further offered by a witness to prove that the said governor and judges, in a sale of lots to him, some time in the year 1824, had stated, on an application of the said witness for the purchase of the lot in question, that the same had been before that time by them sold and conveyed; to the admission of all which the plaintiff, by his attorney, objected, and the court sustained the objection, and rejected said testimony, and the defendants, by their attorney, duly excepted.

And on the trial of said issue, it further appeared in evidence, from the records of the secretary of State, that a Legislature of the State of Michigan, duly elected and returned, was organized and duly qualified under the constitution of said State, on the third day of November, A. D. 1835, and that Stevens T. Mason, having been duly elected and returned, was on the same day duly qualified, and took up[on] himself the execution of the office of governor under the constitution of the said State of Michigan; that the aforesaid act, entitled an act to incorporate the members of the Detroit Young Men's Society, was approved by the said Stevens T. Mason on the 26 of March, in the year 1836, and who was at that time governor, acting under the constitution of the State of Michigan, that John S. Horner was secretary of the late Territory of Michigan, and in the month of July, 1835, acted as governor of said Territory; that he was the last person who exercised the functions of territorial

governor of the Territory of Michigan; that the last official act of said Horner, as governor of the Territory of Michigan, in the office of the secretary of State, is a proclamation, dated in the month of July, in the year 1835; but by reputation it appeared that the said Horner purported to act as territorial governor of Michigan until some time in the year 1836; it further appeared, by the records produced by the late clerk of the late supreme court of the territory of Michigan, that a session of said court, purporting to have been holden by George Morell and Ross Wilkins, as territorial judges, in the month of June, 1836, and adjourned the 30th of said month. And it further appeared, on the trial of said issue, that Solomon Sibley, George Morell, and Ross Wilkins purported to act as judges of the territory of Michigan on the 1st of July, in the year 1836. And on the trial of said issue, the defendants offered a witness, who was present at the time, to prove to the jury that Solomon Sibley and Ross Wilkins, acting as judges of the Territory of Michigan, held a session of the supreme court of said territory on the first Monday of January, in the year 1837, and of which the clerk of said supreme court made no record; to the admission of which the plaintiff, by his attorney, objected, and the court sustained the objection, and rejected said evidence, and the defendants, by their attorney, duly excepted thereto.

And the testimony on both sides being closed and commented upon, and the said court being about to charge the said jury, and to commit to them the said cause, the said defendants, by their attorney, moved the said court, and requested them to charge the said jury, in the words or effect following, to wit:

First. That the act herein before mentioned, entitled an act to incorporate the members of the Detroit Young Men's Society, was not of force or in any wise sufficient in the law to create and constitute, of the lessors of the plaintiff, a corporation or body politic, in the law, capable to take or hold said lot or premises, nor the title thereof, nor to exercise any corporate rights or powers in virtue or under color of said act, unless the jury should find that the State government of the State of Michigan was, at the time of the passing and approval of said act, established, and in full and legal force and operation.

Secondly. That, from and after the establishment and coming into force and operation of said State government, and of the legislature thereof, the territorial government established by the United States, and previously in full force in and over the Territory of Michigan, ceased, and in law and in fact became abrogated, superceded, and annulled.

Third. That from and after the coming into effect and operation of said State government, the powers, duties, and office of judges of said Territory ceased, and became in like manner abrogated and abolished, and by consequence the said Solomon Sibley, George Morell, and Ross Wilkins, as said supposed judges of said territory,

were no longer, after the said establishment and coming into operation of said government, competent in the law as such judges of the territory of Michigan, by said supposed deed by them executed, to convey any right or title in, to, or of said lot fifty-six, or the premises in question, to the said lessors of the plaintiff, nor to perform any other of the functions, nor exercise the powers previously conferred by any act or acts of Congress upon the territorial judges of said Territory of Michigan.

Fourth. But if the said jury should find that the said Solomon Sibley, George Morell, and Ross Wilkins were, on the said first day of July, in the year 1836, severally, in the legal exercise of the office of judge of said Territory of Michigan, duly appointed by the United States, and holding office under such appointment, and that they severally signed and sealed said paper writing or deed, in the execution of their said offices according to the act of Congress, entitled an act to provide for the adjustment of titles to land in the town of Detroit, and Territory of Michigan, and for other purposes, approved April 21st, A. D. 1806, then that by consequence it followed and resulted that the said act, entitled an act to incorporate the members of the Detroit Young Men's Society, was without authority, and in contemplation of law did not create nor constitute the lessors of the plaintiff on the 26th day of March, A. D. 1836, nor on any other day, a corporation or body politic and corporation competent to purchase, acquire, or hold the lot in question, or any real estate whatever.

Fifth. That a territorial and State government cannot co-exist in any of their respective departments; that if the lessors of the plaintiff were well incorporated, and competent, in virtue of said act of incorporation of the Legislature of the State of Michigan, to take and hold the lot or premises in question, then the territorial government of the Territory of Michigan was, at the date of said paper writing or deed, under which the lessors of the plaintiff claim title, abrogated and at an end, and the governor and judges of the said Territory had no legal existence, and said deed is therefore void, and can convey no title in any event; therefore the plaintiff cannot recover.

Sixth. That the paper writing or deed under which the lessors of the plaintiff makes title to the lot or premises in question, being a deed of bargain and sale, and not a donation, is void, and can in no manner be the foundation of any title not being executed by the governor of the Territory of Michigan, as required by the act of Congress, in virtue of which it purports to have been made and executed; and therefore the plaintiff cannot recover. All which charges the court refused to give to the said jury, and to which refusal the defendants, by their attorney, then duly excepted; and, on the contrary, the court charged the jury that the lessors of the plaintiff were well incorporated by the Legislature of the State of Michigan, and by a body competent so to do, and that the afore-

said deed, under which the lessors of the plaintiff makes title, was well executed in the law, and by those competent in the law to convey title to the lot or premises in question; and that, on the 1st day of July, A. D. 1836, there was a governor and judges of the Territory of Michigan, competent to convey title to the premises in question, under the act of Congress, referred to in said paper writing or deed; and that, under said act of Congress, the said paper writing, or deed, was well and sufficiently executed without being executed by the governor of the Territory of Michigan, or being acknowledged or proved as required by the law of the time when the same was made in relation to all the conveyances effecting real estate; to which charges of the court the defendants, by their attorney, duly excepted, and as the facts aforesaid do not appear of record, the defendants pray that this bill of exceptions may be certified and signed by the judges of said court, that the same may become part and parcel of the record in said cause.

By the court allowed, signed, and ordered to be lodged on file.

[Signed,) GEO. MORELL, [L. S.]

E. FARNSWORTH, *Associate Judge.* [L. S.]

Copy.

This indenture, made the first day of July, in the year of our Lord one thousand eight hundred and thirty-six, by the governor and judges of the Territory of Michigan, to the Detroit Young Men's Society in said Territory, *witnesseth*, that the said governor and judges in the consideration of the sum of *of* fifty dollars to them in hand paid, and other good causes and considerations them thereunto moving, have granted, remised, released, and *quit claimed*, all the right, title, and interest by them acquired as trustees, under an act of Congress, passed the twenty-first day of April, in the year of our Lord one thousand eight hundred and six, in this behalf made and provided, and do hereby grant, remise, release, and forever quit claim, unto the said Detroit Young Men's Society, and their assigns, the hereinafter described tract or parcel of land, lying and being in the city of Detroit and Territory aforesaid—said lot being known, designated, and described as fractional part of lot number fifty-six, in section number one, in the city of Detroit—said lot fronting upon Woodward avenue, in said city; and the part hereby conveyed, comprehending so much of the said lot as has not been heretofore aliened and conveyed by the said governor and judges: to have and to hold the said fractional lot, and the land above described, with the appurtenances thereunto belonging, to the said Detroit Young Men's Society, and their assigns, forever.

In witness whereof, the said governor and judges have hereunto

set their hands and seals, the day and year first above mentioned and written.

SOL. SIBLEY, (*Judge.*) [L. S.]
GEO. MORELL, [L. S.]
ROSS WILKINS. [L. S.]

Signed, sealed, and delivered in presence of—
A. S. KELLOGG, *Secretary.*
J. M. HOWARD.

Endorsement.—City Reg'rs office, Detroit. Rec'd for record, this 27 day of Sept., A. D. 1836, at one o'clock, P. M., and recorded in book No. nine, at page 234.

(Signed) THEO. WILLIAMS, *City reg'r.*

And thereupon, the said John Scott and Carl Boland, plaintiffs in error in this suit, by Henry T. Backus, their attorney, come and say, that in the record and proceedings thereof, and also in giving the judgment therein, there is manifest error in this, to wit, in allowing to be read to the jury as evidence, what purported to be an act of the Legislature of the State of Michigan, incorporating the Detroit Young Men's Society, and the paper writing, or deed, under and by virtue of which the lessors of the defendant in error claimed to be a body politic and corporate, and claimed title to the premises in question.

There is also error in this, to wit, the rejection of the testimony tendered and offered by the plaintiffs in error.

There is also error in this, to wit, the refusal of the court below to charge the jury as prayed by the plaintiffs in error.

There is also error in this, to wit, the charge as given by the court below to the jury in the case.

And the said John Scott and Carl Boland pray that the judgment in this case, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing; and that they may be restored to all things which they have lost by reason of the said judgment.

And afterwards, to wit, on the twenty-ninth day of January, in the term of January, in the year of our Lord one thousand eight hundred and forty-two, the said John Jones, by George E. Hand, his attorney, freely comes here in court and says, that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and he prays that the said justices of the supreme court, now here, may proceed to examine, as well the record and proceedings aforesaid, as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

But because the said justices were not then advised what judgment to give, of and upon the premises, a day was therefore given to the parties aforesaid there, until the present January term, in the year one thousand eight hundred and forty-three, to hear their